

October 2004

MJI Publication Updates

**Criminal Procedure Monograph 3—
Misdemeanor Arraignments & Pleas
(Revised Edition)**

**Criminal Procedure Monograph 4—Felony
Arraignments in District Court (Revised
Edition)**

**Criminal Procedure Monograph 6—Pretrial
Motions (Revised Edition)**

**Friend of the Court Domestic Violence
Resource Book (Revised Edition)**

**Juvenile Justice Benchbook (Revised
Edition)**

Sexual Assault Benchbook

October 2004

Update: Criminal Procedure Monograph 3—Misdemeanor Arraignments & Pleas (Revised Edition)

Part A—Commentary on Misdemeanor Arraignments

3.2 Jurisdiction and Venue in District Court

B. Venue

Insert the following case summary before the last paragraph near the bottom of page 5:

Even though the effects of a crime may extend to more than one county, venue is not proper in a county where none of the criminal acts necessary to the commission of the crime occurred. *People v Webbs*, ___ Mich App ___ (2004).

In *Webbs*, the defendant applied for and received a loan from a bank in Wayne County using information belonging to an individual who resided in Grand Traverse County without that individual's permission. The defendant was charged in Grand Traverse County with one count of larceny by false pretenses. MCL 762.8 permits prosecution of a felony in any county where any one criminal act occurred when the felony offense is made up of more than one criminal act. However, according to *Webbs*, the statute does not make venue proper in a county merely "affected" by the felony:

"Even accepting as true plaintiff's allegation that James Hardy suffered tangential effects in Grand Traverse County as a result of defendant's use of Hardy's personal identity information, those alleged effects are not essential to the charged offense." *Webbs*, *supra*, ___ Mich App at ___ (footnote omitted).

October 2004

Update: Criminal Procedure Monograph 4—Felony Arraignments in District Court (Revised Edition)

Part A—Commentary on Felony Arraignments

4.2 Jurisdiction and Venue

B. Venue

Insert the following case summary before the last paragraph near the bottom of page 3:

Even though the effects of a crime may extend to more than one county, venue is not proper in a county where none of the criminal acts necessary to the commission of the crime occurred. *People v Webb*s, ___ Mich App ___ (2004).

In *Webb*s, the defendant applied for and received a loan from a bank in Wayne County using information belonging to an individual who resided in Grand Traverse County without that individual’s permission. The defendant was charged in Grand Traverse County with one count of larceny by false pretenses. MCL 762.8 permits prosecution of a felony in any county where any one criminal act occurred when the felony offense is made up of more than one criminal act. However, according to *Webb*s, the statute does not make venue proper in a county merely “affected” by the felony:

“Even accepting as true plaintiff’s allegation that James Hardy suffered tangential effects in Grand Traverse County as a result of defendant’s use of Hardy’s personal identity information, those alleged effects are not essential to the charged offense.” *Webb*s, *supra*, ___ Mich App at ___ (footnote omitted).

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.18 Motion to Suppress Confession Because of a *Miranda* Violation

4. Interrogation After *Miranda* Rights Have Been Invoked

Insert the following case summary at the bottom of page 34:

A defendant's Fifth Amendment right to counsel is violated when a law enforcement officer interrogates the defendant after he expressed his desire to speak with an attorney and provided the officer with the attorney's name and telephone number. *Abela v Martin*, ___ F 3d ___ (CA 6, 2004). The outcome in *Abela* differed from the outcome in other cases where a defendant's request for counsel was deemed unclear or ambiguous; a defendant's use of the word "maybe" is not dispositive of the defendant's invocation of his or her Fifth Amendment right to counsel. Unlike the circumstances in *Davis v United States*, 512 US 452, 462 (1994), where the Supreme Court concluded that the defendant's statement—"Maybe I should talk to a lawyer"—was "not sufficiently clear such that a reasonable police officer in the circumstances would have understood the statement to be a request for an attorney," the defendant in *Abela* "named the specific individual with whom he wanted to speak and then showed [the police officer] the attorney's business card." *Abela, supra*, ___ F 3d at ___.

Under the circumstances in *Abela*, the Sixth Circuit found that a reasonable officer should have recognized that the defendant was making an unequivocal request for counsel. Once a defendant makes such a request, the rule of *Edwards v Arizona*, 451 US 477, 484–485 (1981), prohibited the police from further interrogation until the defendant's counsel was present or the defendant him- or herself initiated further communication with the police. *Abela, supra*, ___ F 3d at ___.

Update: Friend of the Court Domestic Violence Resource Book (Revised Edition)

CHAPTER 2

Screening and Case Management

2.6 Using Written Form Questionnaires

Effective October 1, 2004, 2004 PA 210 amended MCL 552.507(4). The amendments included removing the text of MCL 552.507(4) and placing the text in the newly created section 7a, MCL 552.507a. Beginning near the bottom of page 39 and continuing on the top of page 40, delete the “**Note**” and replace it with the following text:

Note: MCL 552.507a(1) provides that “[a] copy of each report, recommendation, and any supporting documents *or a summary of supporting documents* prepared or used by the friend of the court or an employee of the office shall be made available to the attorney for each party and to each of the parties before the court takes any action on a recommendation by the office.” [Emphasis added.] Although this statute potentially requires the disclosure of information contained in written questionnaires, it permits Friend of the Court staff to summarize information rather than providing the original documents.

CHAPTER 2

Screening and Case Management

2.13 Confidentiality of Records Identifying the Whereabouts of Abused Individuals

E. Documents That Support Recommendations

Effective October 1, 2004, 2004 PA 210 amended MCL 552.507(4). The amendments included removing the text of MCL 552.507(4) and placing the text in the newly created section 7a, MCL 552.507a. Near the top of page 65 replace the first paragraph and quotation with the following text:

MCL 552.507a(1) provides for access to information gathered by Friend of the Court employees, as follows:

“A copy of each report, recommendation, and any supporting documents *or a summary of supporting documents* prepared or used by the friend of the court or an employee of the office shall be made available to the attorney for each party and to each of the parties before the court takes any action on a recommendation by the office.” [Emphasis added.]

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

A. Who Must Register?

“Convicted.”

On page 521, replace the second bullet with the following text:

- Being assigned to youthful trainee status pursuant to MCL 762.11-762.15 before October 1, 2004. MCL 28.722(a)(ii)(A).*
- Being assigned to youthful trainee status pursuant to MCL 762.11-762.15 on or after October 1, 2004, if the individual’s status of youthful trainee is revoked and an adjudication of guilt is entered. MCL 28.722(a)(ii)(B).

Note: Effective October 1, 2004, 2004 PA 239 amended the Holmes Youthful Trainee Act to prevent individuals charged with certain sex offenses from being assigned to youthful trainee status.

Youthful trainee status is not available for an individual who pleads guilty to a violation, an attempted violation, or conspiracy to violate any of the following statutes:*

- MCL 750.520b, first-degree criminal sexual conduct;
- MCL 750.520c, second-degree criminal sexual conduct;
- MCL 750.520d, third-degree criminal sexual conduct (except under 750.520d(1)(a), which requires that the victim be at least 13 years of age but under 16 years of age);

*See 2004 PA 240, effective October 1, 2004.

*This listing only contains sexual conduct crimes; it is not the complete list of crimes contained in MCL 762.11. For a complete listing, see 2004 PA 239.

- MCL 750.520e, fourth-degree criminal sexual conduct (except under MCL 750.520e(1)(a), which requires that the victim be at least 13 years of age but under 16 years of age, and that the actor be five or more years older than the victim);
- MCL 750.520g, assault with the intent to commit a violation of one of the above enumerated offenses. MCL 762.11(2)(d)–(e).

MCL 762.11(3) also prohibits a court from assigning an individual to youthful trainee status if any of the following apply:

“(a) The individual was previously convicted of or adjudicated for a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

“(b) If the individual is charged with a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to engage in further listed offenses.

“(c) The court determines that the offense involved any of the following:

(i) A factor set forth in section 520b(1)(a) to (h) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(ii) A factor set forth in section 520c(1)(a) to (l) of the Michigan penal code, 1931 PA 328, MCL 750.520c.

(iii) A factor set forth in section 520d(1)(b) to (e) of the Michigan penal code, 1931 PA 328, MCL 750.520d.

(iv) A factor set forth in section 520e(1)(b) to (f) of the Michigan penal code, 1931 PA 328, MCL 750.520e.”

2004 PA 240 allows certain individuals assigned to youthful trainee status before October 1, 2004, to petition the court for a reduction in the period of time during which they must comply with SORA. See new subsection 25.18(I), below, for more information.

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

B. Initial Registration and Duties

Individuals convicted in Michigan.

On page 525, in the first paragraph, replace the first sentence with the following text:

The probation officer or the court must provide the registration form, explain the duty to register and to pay a registration fee,* to verify his or her address, and to provide notice of address changes, and accept the completed registration for processing under MCL 28.726. MCL 28.724(5), as amended by 2004 PA 240 and 2004 PA 237.

*See subsection 25.18(D) for information on the registration fee.

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

D. The “Registration”

After the last paragraph on page 529, insert the following text:

Registration fee. In addition to remitting the verification form, the individual is responsible for submitting a \$35.00 original registration fee to the State Police unless excused from the fee under MCL 28.725b. MCL 28.727(1). MCL 28.725b(3) provides that the registration fee may be temporarily waived if the individual is indigent.

MCL 28.729(4) states:

“An individual who willfully refuses or fails to pay the registration fee prescribed in [MCL 28.725a*] or [MCL 28.727(1)] within 90 days of the date the individual reports under [MCL 28.724a] or [MCL 28.725a] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days.”

*As amended by 2004 PA 237 and 2004 PA 240.

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

E. Length of Registration Period

Lifetime registration.

After the “**Note**” following the last bullet near the bottom of page 530, insert the following text:

Certain individuals may be excused from lifetime registration if they file a petition pursuant to MCL 28.728c and the petition is granted. For more information on filing a petition pursuant to MCL 28.728c, see subsection 25.18(I), below.

10- or 25-year registration.

On page 531, immediately before subsection (F), insert the following text:

Certain individuals may be excused from the 25-year or 10-year registration requirements if they file a petition pursuant to MCL 28.728c and the petition is granted. For more information on filing a petition pursuant to MCL 28.728c, see subsection 25.18(I), below.

F. Yearly or Quarterly Verification of Domicile or Residence

On page 531, after the bulleted list, insert the following text:

The continued reporting requirements do not apply to “an individual convicted as a juvenile of committing an offense described in [MCL 28.728c(15)(a) or (b)] committed by the individual when he or she was less than 17 years of age, except that the individual shall report a change in his or her residence within this state or to another state as provided in this section within 10 days after the change of residence is made. If the individual fails to file a petition under [MCL 28.728(c)] before he or she becomes 18 years of age, or if his or her petition is denied by the court, the individual shall report as otherwise required under this section.” MCL 28.725a(5), as amended by 2004 PA 240.* See subsection 25.18(I) for an listing of the offenses described in MCL 28.728c(15)(a) and (b) and for more information on petitions filed pursuant to MCL 28.728c.

On page 531, insert the following text at the end of the first full paragraph after the bulleted list:

An individual who reports pursuant to MCL 28.725a(3) or (4) and who has not already paid the sex offender registration fee must pay a \$35.00 sex offender registration fee. The individual must only be required to pay the fee once. MCL 28.725a(7), as amended by 2004 PA 237.*

*Effective
October 1,
2004.

*Effective
October 16,
2004.

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

G. Public Notification and the Computerized Databases

Near the middle of page 534, add the following text to the bulleted list:

- ♦ Beginning May 1, 2005, a photograph of each individual. Photographs will be obtained from the Secretary of State. MCL 28.728(4)(c) as amended by 2004 PA 240.*

*Effective
October 1,
2004.

H. Juvenile Offenders Exempt From Public Notification Requirements

On page 535, replace the text of subsection (H) with the following text:

Although juvenile offenders not tried as adults are subject to the same registration requirements as adult offenders, they are generally exempted from the SORA's public notification requirements and from having their registrations placed in the State Police's public database. See MCL 28.728(2) and *In re Ayres*, 239 Mich App 8, 12 (1999). However, except as set forth in subsection (I), below, this exemption does not apply to juvenile dispositions for either first-degree criminal sexual conduct, MCL 750.520b, or second-degree criminal sexual conduct, MCL 750.520c, after the juvenile offender becomes 18 years of age. Nor does this exemption apply to juvenile offenders convicted under "automatic" or "traditional" waivers, or by "case designation" methods. MCL 28.728(3) provides in pertinent part:

"(3) The database described in subsection (2) shall not include the following individuals:

"(a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d. Except as provided in subdivision (b), the exclusion for juvenile dispositions does not apply to a disposition for a violation of section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, after the individual becomes 18 years of age.

"(b) An individual who is exempt under section 8d from that database."

I. Petition for Exemption From Registration or Alternate Registration Period

On page 535, insert the following new subsection (I) and redesignate existing subsections (I)-(L) accordingly.

Juveniles convicted of criminal sexual conduct offenses listed below may petition the court for exemption from the registration requirements of SORA. In addition, individuals who successfully complete youthful trainee status may petition the court to reduce the period of time during which they are subject to the registration and reporting requirements of SORA.*

*2004 PA 240, effective October 1, 2004.

1. Who May Petition the Court

Convictions before October 1, 2004. MCL 28.728c(1) provides that the following individuals, if convicted before October 1, 2004, may petition the court to seek registration under MCL 28.728d(1):

- ♦ An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(a)(i)-(ii).
- ♦ An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g, if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(b)(i)-(ii).
- ♦ An individual who has successfully completed his or her probationary period under the Holmes Youthful Trainee Act, MCL 762.11-762.15, for committing a listed offense, and has been discharged from youthful trainee status.* MCL 28.728c(15)(c).

*For more information on youthful trainee status, see subsection 25.18(A), above.

*A court may hold a petition in abeyance if the petitioner has a pending felony charge. See subsection 25.18(1)(4), below.

MCL 28.728c(4) provides that a petition under MCL 28.728c(1) must be “filed before October 1, 2007 or within 3 years after the individual is discharged from the jurisdiction of the juvenile court or, if the individual was assigned to youthful trainee status, within 3 years after he or she has successfully completed youthful trainee status, whichever is later, and, except as otherwise provided in this subsection,* the court shall not consider a petition filed by the individual after that date.”

Convictions on or after October 1, 2004. MCL 28.728c(2) provides that the following individuals, if convicted on or after October 1, 2004, may petition the court to seek registration under MCL 28.728d(1):

- ◆ An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(a)(i)-(ii).
- ◆ An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g, if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(b)(i)-(ii).

MCL 28.728c(4) provides that a petition under MCL 28.728c(2) “shall not be filed before the individual’s seventeenth birthday or after the individual’s twentieth birthday.”

2. Filing the Petition

A petition filed under MCL 28.728c must be filed in the court where the juvenile was convicted of the listed offense. MCL 28.728c(4). A petition shall not be filed under MCL 28.728c if a petition was previously filed and was denied by the court after a hearing. MCL 28.728c(4). At least 30 days prior to holding a hearing on the petition, a copy of the petition must also be filed with

the prosecuting attorney's office that prosecuted the case against the individual. MCL 28.728c(7).

3. Contents of the Petition

MCL 28.728c(5) requires that the petition be made under oath and contain all of the following:

- ◆ The name and address of the petitioner.
- ◆ A statement identifying the offense for which registration pursuant to MCL 28.728d is being requested.
- ◆ A statement of whether the individual was previously convicted of a listed offense for which registration is required under SORA.
- ◆ A statement specifically stating that the individual is not disqualified under MCL 28.728c(14) from filing a petition.* MCL 28.728c(5)(a)-(d).

MCL 28.728c(6) states:

“An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under . . . MCL 750.423.”

4. Hearing on the Petition

If an individual properly files a petition, the court must conduct a hearing on the petition. MCL 28.728c(10).

If the individual is charged in Michigan or another state with committing, attempting to commit, or conspiring to commit a felony other than the one described in the petition or an offense that if committed by an adult would be a felony, the court may hold a petition in abeyance until final disposition of the charge. MCL 28.728c(4). If the court holds the petition in abeyance, the three-year limitation period for filing a petition prescribed in MCL 28.728c(4)* begins to run when the abeyance has ended. MCL 28.728c(4).

The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition. MCL 28.728c(7). If the prosecuting attorney knows the name of the victim, he or she must provide the victim with written notice that a petition has been filed and provide the victim with a copy of the petition. The notice must be sent by first-class mail to the victim's last known address and include a statement of the victim's rights under MCL 28.728c(11). MCL 28.728c(8).

The victim has the right to attend all proceedings under MCL 28.728c and to make a written or oral statement to the court before any decision regarding the

*See sub-
subsection
25.18(1)(5),
below, for more
information on
disqualification
under MCL
28.728c(14).

*See sub-
subsection
25.18(1)(1),
above, for more
information on
MCL
28.728c(4).

petition is made. MCL 28.728c(11). However, a victim must not be *required* to appear at any proceeding against his or her will. *Id.*

MCL 28.728c(12) requires the court to consider all of the following in determining whether to grant the petition:

“(a) The individual’s age and level of maturity at the time of the offense.

“(b) The victim’s age and level of maturity at the time of the offense.

“(c) The nature of the offense.

“(d) The severity of the offense.

“(e) The individual’s prior juvenile or criminal history.

“(f) The individual’s likelihood to commit further listed offenses.

“(g) Any impact statement submitted by the victim under the crime victim’s rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.

“(h) Any other information considered relevant by the court.”

5. Denying or Granting the Petition

Pursuant to MCL 28.728c(14), the court is prohibited from granting a petition if any of the following apply:

- ◆ The petitioner was previously convicted of a listed offense for which registration is required under SORA. MCL 28.728c(14)(a).
- ◆ The petitioner fails to prove by clear and convincing evidence that he or she is not likely to commit further listed offenses. MCL 28.728c(14)(b).
- ◆ The court determines that the offense involved any of the following:
 - One of the factors set forth in MCL 750.520b(1)(b) to (h);*
 - One of the factors set forth in MCL 750.520c(1)(b) to (l);
 - One of the factors set forth in MCL 750.520d(1)(b) to (e); or
 - One of the factors set forth in MCL 750.520e(1)(b) to (f). MCL 28.728c(14)(c)(i)-(iv).
- ◆ The petitioner is charged in Michigan or elsewhere with committing, attempting to commit, or conspiring to commit a felony, other than the

*See Smith, *Sexual Assault Benchbook* (MJJ, 2002), Sections 2.2(A)(1), 2.2(B)(1), 2.3(A)(1), and 2.3(B)(1) for a listing of the factors described here.

one described in the petition, or an offense that if committed by an adult would be a felony. MCL 28.728c(14)(d).

- ♦ The petitioner was sentenced for the offense as an adult. However, this does not apply to an individual who has completed probation and was discharged under the Holmes Youthful Trainee Act. MCL 28.728c(14)(e).

“If the court determines that the individual meets the criteria for registration under [MCL 28.728d], the court may order the individual to register under this act as provided in that section.” MCL 28.728c(13).*

*See sub-
subsection
25.18(1)(7),
below.

If the court grants the petition, the court must promptly provide a copy of the order to the State Police and to the petitioner. MCL 28.728d(3).

If the State Police are provided with an order granting the petition for a petitioner described in MCL 28.728c(15)(a) or (b),* the State Police shall not enter the individual’s registration on the public registry or, if the person is already registered, the State Police must promptly remove an individual’s registration from the public registry. MCL 28.728d(3). The State Police must promptly remove an individual’s registration from the nonpublic registry upon expiration of the applicable registration period described in MCL 28.728d(1) or (2). MCL 28.728d(3).

*See sub-
subsection
25.18(1)(1),
above, for
information
concerning
these
petitioners.

6. Registration While the Petition Is Pending

MCL 28.728c(9) states:

“(9) If an individual petitions the court under subsection (1) or (2) for an offense described in subsection (15)(a) or (b) and the individual is not on the [public] database maintained under [MCL 28.728(2)] at the time the petition is filed, the court may order the department not to place the individual on that database during the period in which the court is considering whether to grant the petition as follows:

“(a) Except as provided in subdivision (b), for a period of 30 days after the date the order is issued or as provided by the court, whichever occurs first.

“(b) If jurisdiction is continued by the court past the individual’s seventeenth birthday, during the period in which jurisdiction is continued. The court shall notify the department of the order as required under [MCL 28.728d].”

If the court orders the petitioner to register under MCL 28.728d pending the court’s determination on the petition, the court must promptly provide a copy of that order to the State Police and to the petitioner. MCL 28.728d(2).

*See sub-
subsection
25.18(I)(1),
above, for a
description of
these
petitioners.

If the State Police are provided with such an order for a petitioner described in MCL 28.728c(15)(a) or (b),* then the State Police must not enter the petitioner's registration into the public registry until ordered by the court to do so, or until the expiration of the order, whichever occurs first. MCL 28.728d(2).

7. Registration Pursuant to MCL 28.728d

Pursuant to MCL 28.728d(1), if the court grants a petition filed pursuant to MCL 28.728c, the petitioner must register as a sex offender as follows:

- ♦ A juvenile shall register until the petition is granted but is not subject to the requirements of the public registry. MCL 28.728d(1)(a).
- ♦ A youthful trainee who successfully completes his or her probationary period shall register for a period of ten years after the date that he or she initially registered, or if the petitioner was in a state correctional facility, for ten years after he or she is released from that facility, whichever is greater. The petitioner is subject to the requirements of the public registry during that registration period. MCL 28.728d(1)(b).

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

L. Registration Violation Enforcement

Penalties.

On page 538, replace the text of the second bullet with the following text:

An individual who fails to comply with MCL 28.725a (yearly and quarterly verification), other than the payment of the registration fee, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a maximum fine of \$1,000.00, or both. MCL 28.729(2).*

*2004 PA 237,
effective
October 16,
2004.

On page 538, before the paragraph beginning “**Additional mandatory penalties**,” insert the following new bullet:

- Failure to Pay the Registration Fee

An individual who willfully refuses or fails to pay the registration fee prescribed in MCL 28.725a* or MCL 28.727(1) within 90 days of reporting is guilty of a misdemeanor punishable by imprisonment for not more than 90 days. MCL 28.729(4), as amended by 2004 PA 237.

*2004 PA 237
and 2004 PA
240.

Update: Sexual Assault Benchbook

CHAPTER 7

General Evidence

7.6 Former Testimony of Unavailable Witness

Insert the following text on page 364 after the August 2004 update:

In *People v Shepherd*, ___ Mich App ___, ___ (2004), the Court of Appeals held that the transcript of a guilty plea of an unavailable witness is a “testimonial statement” and is therefore not admissible unless the defendant had a prior opportunity for cross-examination. In *Shepherd*, the defendant was convicted of perjury. The defendant was charged based upon her testimony at Mr. Butters’ trial for fleeing and eluding. After Butters’ trial, he was charged with and pleaded guilty to subornation of perjury for his part in soliciting the defendant to commit perjury. At the defendant’s trial, Butters was unavailable but the transcript of Butters’ guilty plea was admitted as evidence of defendant’s perjury. The defendant appealed, arguing that the plea constituted “testimonial evidence” and was therefore inadmissible under *Crawford v Washington*, 541 US ___ (2004), which held that the admission of an unavailable witness’ testimonial evidence violates the Confrontation Clause unless the defendant had a prior opportunity for cross-examination. In reversing the conviction, the Court stated:

“The trial court’s admission of the transcript of Mr. Butters’s guilty plea was clearly improper. Mr. Butters’s testimony made under oath in court is an obvious example of testimonial evidence—Mr. Butters bore testimony against himself implicating defendant in his crime of subornation of perjury. Defendant was absent from that proceeding and was given no opportunity for cross-examination. Furthermore, the transcript was presented to prove the truth of the matter asserted—that defendant gave false testimony pursuant to Mr. Butters’s solicitation of these particular statements. As such, its admission violated defendant’s Sixth Amendment right to confront the witnesses against her.”

During the defendant's perjury trial, a letter written by Mr. Butters to the defendant was also admitted into evidence. The letter, referred to as the "script," contained 21 questions and answers involving the original charge that Mr. Butters faced. The defendant argued that the admission violated her right to confront the defendant. The Court of Appeals concluded that the letter was not "testimonial evidence." Further, the Court held that because the letter bore sufficient indicia of reliability, it was admissible.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

A. Who Must Register?

1. “Convicted”

On page 514, replace the second bullet with the following text:

- ♦ Being assigned to youthful trainee status pursuant to MCL 762.11-762.15 before October 1, 2004. MCL 28.722(a)(ii)(A).*
- ♦ Being assigned to youthful trainee status pursuant to MCL 762.11-762.15 on or after October 1, 2004, if the individual’s status of youthful trainee is revoked and an adjudication of guilt is entered. MCL 28.722(a)(ii)(B).

Note: Effective October 1, 2004, 2004 PA 239 amended the Holmes Youthful Trainee Act to prevent individuals charged with certain sex offenses from being assigned to youthful trainee status.

Youthful trainee status is not available for an individual who pleads guilty to a violation, an attempted violation, or conspiracy to violate any of the following statutes:*

- MCL 750.520b, first-degree criminal sexual conduct;
- MCL 750.520c, second-degree criminal sexual conduct;
- MCL 750.520d, third-degree criminal sexual conduct (except under MCL 750.520d(1)(a), which requires that the victim be at least 13 years of age but under 16 years of age);
- MCL 750.520e, fourth-degree criminal sexual conduct (except under MCL 750.520e(1)(a), which requires that the victim be at least 13 years of age but under 16 years of age, and that the actor be five or more years older than the victim);
- MCL 750.520g, assault with the intent to commit a violation of one of the above enumerated offenses. MCL 762.11(2)(d)–(e).

MCL 762.11(3) also prohibits a court from assigning an individual to youthful trainee status if any of the following apply:

*See 2004 PA 240, effective October 1, 2004.

*This listing only contains sexual conduct crimes; it is not the complete list of crimes contained in MCL 762.11. For a complete listing, see 2004 PA 239.

*“Listed offense” is defined in MCL 28.722. MCL 762.11(4)(a). See Section 11.2(A)(2), below, for more information.

“(a) The individual was previously convicted of or adjudicated for a listed offense* for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

“(b) If the individual is charged with a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to engage in further listed offenses.

“(c) The court determines that the offense involved any of the following:

*See Section 2.2(A)(1) for a listing of the factors.

(i) A factor set forth in section 520b(1)(a) to (h) of the Michigan penal code, 1931 PA 328, MCL 750.520b.*

*See Section 2.3(A)(1) for a listing of the factors.

(ii) A factor set forth in section 520c(1)(a) to (l) of the Michigan penal code, 1931 PA 328, MCL 750.520c.*

*See Section 2.2(B)(1) for a listing of the factors.

(iii) A factor set forth in section 520d(1)(b) to (e) of the Michigan penal code, 1931 PA 328, MCL 750.520d.*

*See Section 2.3(B)(1) for a listing of the factors.

(iv) A factor set forth in section 520e(1)(b) to (f) of the Michigan penal code, 1931 PA 328, MCL 750.520e.”*

2004 PA 240 allows certain individuals assigned to youthful trainee status before October 1, 2004, to petition the court for a reduction in the period of time during which they must comply with SORA. See new subsection (I), below, for more information.

11.2 Sex Offenders Registration Act

B. Initial Registration and Duties

1. Individuals Convicted in Michigan

On page 518, in the first full paragraph after the “**Note**,” replace the first sentence with the following text:

The probation officer or the court must provide the registration form, explain the duty to register and to pay a registration fee,* to verify his or her address, and to provide notice of address changes, and accept the completed registration for processing under MCL 28.726. MCL 28.724(5), as amended by 2004 PA 240 and 2004 PA 237.

*See sub-
subsection 11.2
(D)(4), below,
for information
on the
registration fee.

11.2 Sex Offenders Registration Act

D. The “Registration”

On page 521, immediately after sub-subsection (3), insert the following new sub-subsection:

4. Registration Fee

In addition to remitting the verification form, the individual is responsible for submitting a \$35.00 original registration fee to the State Police unless excused from the fee under MCL 28.725b. MCL 28.727(1). MCL 28.725b(3) provides that the registration fee may be temporarily waived if the individual is indigent.

MCL 28.729(4) states:

“An individual who willfully refuses or fails to pay the registration fee prescribed in [MCL 28.725a*] or [MCL 28.727(1)] within 90 days of the date the individual reports under [MCL 28.724a] or [MCL 28.725a] is guilty of a misdemeanor punishable by imprisonment for not more than 90 days.”

*As amended
by 2004 PA 237
and 2004 PA
240.

E. Length of Registration Period

1. Lifetime Registration

After the last bullet on page 521, insert the following text:

Certain individuals may be excused from lifetime registration if they file a petition pursuant to MCL 28.728c and the petition is granted. For more information on filing a petition pursuant to MCL 28.728c, see subsection (I), below.

11.2 Sex Offenders Registration Act

E. Length of Registration Period

2. 25-Year Registration or 10-Years After Release From Prison

Near the top of page 522, at the end of this sub-subsection, insert the following text:

Certain individuals may be excused from the 25-year or 10-year registration requirements if they file a petition pursuant to MCL 28.728c and the petition is granted. For more information on filing a petition pursuant to MCL 28.728c, see subsection (I), below.

F. Yearly or Quarterly Verification of Domicile or Residence

On page 522, after the bulleted list, insert the following text:

The continued reporting requirements do not apply to “an individual convicted as a juvenile of committing an offense described in [MCL 28.728c(15)(a) or (b)] committed by the individual when he or she was less than 17 years of age, except that the individual shall report a change in his or her residence within this state or to another state as provided in this section within 10 days after the change of residence is made. If the individual fails to file a petition under [MCL 28.728c] before he or she becomes 18 years of age, or if his or her petition is denied by the court, the individual shall report as otherwise required under this section.” MCL 28.725a(5), as amended by 2004 PA 240.* See subsection (I), below, for a list of the offenses described in MCL 28.728c(15)(a) and (b) and for more information on petitions filed pursuant to MCL 28.728c.

Near the middle of page 522, insert the following text at the end of the first full paragraph after the bulleted list:

An individual who reports pursuant to MCL 28.725a(3) or (4) and who has not already paid the sex offender registration fee must pay a \$35.00 sex offender registration fee. The individual must only be required to pay the fee once. MCL 28.725a(7), as amended by 2004 PA 237.

*Effective
October 1,
2004.

*Effective
October 16,
2004.

11.2 Sex Offenders Registration Act

G. Public Notification and the Computerized Databases

Near the bottom of page 524, add the following text to the bulleted list:

- ♦ Beginning May 1, 2005, a photograph of each individual. Photographs will be obtained from the Secretary of State. MCL 28.728(4)(c), as amended by 2004 PA 240.*

*Effective
October 1,
2004.

11.2 Sex Offenders Registration Act

H. Juvenile Offenders Exempt From Public Notification Requirements

On age 525, replace the text of subsection (H) with the following text:

Although juvenile offenders not tried as adults are subject to the same registration requirements as adult offenders,* they are generally exempted from the SORA's public notification requirements and from having their registrations placed in the State Police's public database. See MCL 28.728(2) and *In re Ayres*, 239 Mich App 8, 12 (1999). However, except as set forth in subsection (I), below, this exemption does not apply to juvenile dispositions for either first-degree criminal sexual conduct, MCL 750.520b, or second-degree criminal sexual conduct, MCL 750.520c, after the juvenile offender becomes 18 years of age. Nor does this exemption apply to juvenile offenders convicted under "automatic" or "traditional" waivers, or by "case designation" methods. MCL 28.728(3) provides in pertinent part:

"(3) The database described in subsection (2) shall not include the following individuals:

"(a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d. Except as provided in subdivision (b), the exclusion for juvenile dispositions does not apply to a disposition for a violation of section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, after the individual becomes 18 years of age.

"(b) An individual who is exempt under section 8d from that database."

I. Petition for Exemption From Registration or Alternate Registration Period

On page 526, insert the following new subsection (I) and redesignate existing subsections (I)-(L) accordingly:

Juveniles convicted of criminal sexual conduct offenses listed below may petition the court for exemption from the registration requirements of SORA. In addition, individuals who successfully complete youthful trainee status may petition the court to reduce the period of time during which they are subject to the registration and reporting requirements of SORA.*

*See Section 11.2(D) for registration requirements.

*2004 PA 240, effective October 1, 2004.

1. Who May Petition the Court

Convictions before October 1, 2004. MCL 28.728c(1) provides that the following individuals, if convicted before October 1, 2004, may petition the court to seek registration under MCL 28.728d(1):

- ♦ An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(a)(i)-(ii).
- ♦ An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g, if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(b)(i)-(ii).
- ♦ An individual who has successfully completed his or her probationary period under the Holmes Youthful Trainee Act, MCL 762.11-762.15, for committing a listed offense and has been discharged from youthful trainee status.* MCL 28.728c(15)(c).

*For more information on youthful trainee status, see subsection 11.2 (A)(1), above.

*A court may hold a petition in abeyance if the petitioner has a pending felony charge. See subsection 11.2 (I)(4), below.

MCL 28.728c(4) provides that a petition under MCL 28.728c(1) must be “filed before October 1, 2007 or within 3 years after the individual is discharged from the jurisdiction of the juvenile court or, if the individual was assigned to youthful trainee status, within 3 years after he or she has successfully completed youthful trainee status, whichever is later, and, except as otherwise provided in this subsection,* the court shall not consider a petition filed by the individual after that date.”

Convictions on or after October 1, 2004. MCL 28.728c(2) provides that the following individuals, if convicted on or after October 1, 2004, may petition the court to seek registration under MCL 28.728d(1):

- ♦ An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(a)(i)-(ii).
- ♦ An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a), and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g, if either of the following applies:
 - The individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim.
 - The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.728c(15)(b)(i)-(ii).

MCL 28.728c(4) provides that a petition under MCL 28.728c(2) “shall not be filed before the individual’s seventeenth birthday or after the individual’s twentieth birthday.”

2. Filing the Petition

A petition filed under MCL 28.728c must be filed in the court where the juvenile was convicted of the listed offense. MCL 28.728c(4). A petition shall not be filed under MCL 28.728c if a petition was previously filed and was denied by the court after a hearing. MCL 28.728c(4). At least 30 days prior to holding a hearing on the petition, a copy of the petition must also be filed with the prosecuting attorney’s office that prosecuted the case against the individual. MCL 28.728c(7).

3. Contents of the Petition

MCL 28.728c(5) requires that the petition be made under oath and contain all of the following:

- ♦ The name and address of the petitioner.
- ♦ A statement identifying the offense for which registration pursuant to MCL 28.728d is being requested.

*See sub-
subsection 11.2
(I)(5), below,
for more
information on
disqualification
under MCL
28.728c(14).

- ♦ A statement of whether the individual was previously convicted of a listed offense for which registration is required under SORA.
- ♦ A statement specifically stating that the individual is not disqualified under MCL 28.728c(14) from filing a petition.* MCL 28.728c(5)(a)-(d).

MCL 28.728c(6) states:

“An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under . . . MCL 750.423.”

4. Hearing on the Petition

If an individual properly files a petition, the court must conduct a hearing on the petition. MCL 28.728c(10).

*See sub-
subsection 11.2
(I)(1), above,
for more
information on
MCL
28.728c(4).

If the individual is charged in Michigan or another state with committing, attempting to commit, or conspiring to commit a felony other than the one described in the petition or an offense that if committed by an adult would be a felony, the court may hold a petition in abeyance until final disposition of the charges. MCL 28.728c(4). If the court holds the petition in abeyance, the three-year limitation period for filing a petition prescribed in MCL 28.728c(4)* begins to run when the abeyance has ended. MCL 28.728c(4).

The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition. MCL 28.728c(7). If the prosecuting attorney knows the name of the victim, he or she must provide the victim with written notice that a petition has been filed and provide the victim with a copy of the petition. The notice must be sent by first-class mail to the victim’s last known address and include a statement of the victim’s rights under MCL 28.728c(11). MCL 28.728c(8).

The victim has the right to attend all proceedings under MCL 28.728c and to make a written or oral statement to the court before any decision regarding the petition is made. MCL 28.728c(11). However, a victim must not be *required* to appear at any proceeding against his or her will. *Id.*

MCL 28.728c(12) requires the court to consider all of the following in determining whether to grant the petition:

“(a) The individual’s age and level of maturity at the time of the offense.

“(b) The victim’s age and level of maturity at the time of the offense.

“(c) The nature of the offense.

“(d) The severity of the offense.

“(e) The individual’s prior juvenile or criminal history.

“(f) The individual’s likelihood to commit further listed offenses.

“(g) Any impact statement submitted by the victim under the crime victim’s rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.

“(h) Any other information considered relevant by the court.”

5. Denying or Granting the Petition

Pursuant to MCL 28.728c(14), the court is prohibited from granting a petition if any of the following apply:

- ◆ The petitioner was previously convicted of a listed offense for which registration is required under SORA. MCL 28.728c(14)(a).
- ◆ The petitioner fails to prove by clear and convincing evidence that he or she is not likely to commit further listed offenses. MCL 28.728c(14)(b).
- ◆ The court determines that the offense involved any of the following:
 - One of the factors set forth in MCL 750.520b(1)(b) to (h) (see Section 2.2(A)(1) for a listing of the factors);
 - One of the factors set forth in MCL 750.520c(1)(b) to (l) (see Section 2.3(A)(1) for a listing of the factors);
 - One of the factors set forth in MCL 750.520d(1)(b) to (e) (see Section 2.2(B)(1) for a listing of the factors); or
 - One of the factors set forth in MCL 750.520e(1)(b) to (f) (see Section 2.3(B)(1) for a listing of the factors). MCL 28.728c(14)(c)(i)-(iv).
- ◆ The petitioner is charged in Michigan or elsewhere with committing, attempting to commit, or conspiring to commit a felony, other than the one described in the petition, or an offense that if committed by an adult would be a felony. MCL 28.728c(14)(d).
- ◆ The petitioner was sentenced for the offense as an adult. However, this does not apply to an individual who has completed probation and was discharged under the Holmes Youthful Trainee Act. MCL 28.728c(14)(e).

“If the court determines that the individual meets the criteria for registration under [MCL 28.728d], the court may order the individual to register under this act as provided in that section.” MCL 28.728c(13).*

*See sub-
subsection
11.2(I)(7),
below.

If the court grants the petition, the court must promptly provide a copy of the order to the State Police and to the petitioner. MCL 28.728d(3).

*See sub-
subsection 11.2
(I)(1), above,
for information
concerning the
petitioners.

If the State Police are provided with an order granting the petition for a petitioner described in MCL 28.728c(15)(a) or (b),* the State Police shall not enter the individual's registration on the public registry or, if the person is already registered, the State Police must promptly remove an individual's registration from the public registry. MCL 28.728d(3). The State Police must promptly remove an individual's registration from the nonpublic registry upon expiration of the applicable registration period described in MCL 28.728d(1) or (2). MCL 28.728d(3).

6. Registration While the Petition Is Pending

MCL 28.728c(9) states:

“(9) If an individual petitions the court under subsection (1) or (2) for an offense described in subsection (15)(a) or (b) and the individual is not on the [public] database maintained under [MCL 28.728(2)] at the time the petition is filed, the court may order the department not to place the individual on that database during the period in which the court is considering whether to grant the petition as follows:

“(a) Except as provided in subdivision (b), for a period of 30 days after the date the order is issued or as provided by the court, whichever occurs first.

“(b) If jurisdiction is continued by the court past the individual's seventeenth birthday, during the period in which jurisdiction is continued. The court shall notify the department of the order as required under [MCL 28.728d].”

If the court orders the petitioner to register under MCL 28.728d pending the court's determination on the petition, the court must promptly provide a copy of that order to the State Police and to the petitioner. MCL 28.728d(2).

*See sub-
subsection 11.2
(I)(1), above,
for a
description of
these
petitioners.

If the State Police are provided with such an order for a petitioner described in MCL 28.728c(15)(a) or (b),* then the State Police must not enter the petitioner's registration into the public registry until ordered by the court to do so, or until the expiration of the order, whichever occurs first. MCL 28.728d(2).

7. Registration Pursuant to MCL 28.728d

Pursuant to MCL 28.728d(1), if the court grants a petition filed pursuant to MCL 28.728c, the petitioner must register as a sex offender as follows:

- ♦ A juvenile shall register until the petition is granted but is not subject to the requirements of the public registry. MCL 28.728d(1)(a).
- ♦ A youthful trainee who successfully completes his or her probationary period shall register for a period of ten years after the date that he or she initially registered, or if the petitioner was in a state correctional facility, for ten years after he or she is released from that facility, whichever is greater. The petitioner is subject to the requirements of the public registry during that registration period. MCL 28.728d(1)(b).

11.2 Sex Offenders Registration Act

L. Registration Violation Enforcement; Venue and Penalties

2. Penalties

Near the top of page 528, replace the text of the first bullet with the following text:

An individual who fails to comply with MCL 28.725a (yearly and quarterly verification), other than the payment of the registration fee, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a maximum fine of \$1,000.00, or both. MCL 28.729(2).*

On page 528, after the second bullet, insert the following new bullet:

♦ Failure to Pay the Registration Fee

An individual who willfully refuses or fails to pay the registration fee prescribed in MCL 28.725a* or MCL 28.727(1) within 90 days of reporting is guilty of a misdemeanor punishable by imprisonment for not more than 90 days. MCL 28.729(4), as amended by 2004 PA 237.

*2004 PA 237, effective October 16, 2004.

*2004 PA 237 and 2004 PA 240.